

Based upon the evidence presented for the purpose of preliminary hearing, the Appeals Board finds as follows:

The above-enumerated issues are issues specifically designated by K.S.A. 44-534a as appealable from preliminary hearing orders and thus the Appeals Board has jurisdiction to consider these matters.

Claimant alleges accidental injury in December 1992 and again in March 1993, with a series thereafter, to his shoulders, back, neck, arms and wrists. He has been diagnosed as having a herniated disc in his neck at C5-C6, with a large bulge at C6-C7. He has also been diagnosed, at various times, with cervical strain sprain, bilateral carpal tunnel syndrome, thoracic outlet syndrome, lateral epicondylitis and thoracic strain/sprain.

The evidence indicates claimant's injury in December 1992 was not as significant as his later injuries, although it was to the same area injured in March 1993.

The history provided by claimant to the treating physicians, including Dr. Berger and Dr. Geitz, is consistent with the claimant's allegations of injury in December 1992 and March 1993. The medical history and claimant's testimony further confirms claimant suffered a series of injuries beginning in March 1993, with March 1993 being the most significant onset date.

Respondent argues claimant has been diagnosed with carpal tunnel syndrome and, following the Court of Appeals mandate in Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994), the date of injury must be designated as claimant's last day worked, i.e., July 26, 1993.

A review of the medical evidence indicates claimant's carpal tunnel syndrome is not the most significant condition diagnosed. It appears as though claimant's shoulder and neck problems are more significant, causing claimant the most difficulty. It also appears as though claimant's neck and shoulder problems, while injured in December 1992, have a definite onset as a result of the incident in March 1993. With claimant's condition being more in the shoulder and neck and with the carpal tunnel syndrome being a less significant injury, the bright line test established in Berry would not apply in designating the date of injury in this matter.

K.S.A. 44-501 and K.S.A. 44-508(g) makes it the claimant's responsibility to prove by a preponderance of the credible evidence his entitlement to benefits. The Appeals Board finds claimant has proven injury in December 1992 with a more significant injury in March 1993 while employed with respondent.

The Appeals Board further finds claimant provided notice to his employer of the injury as required by K.S.A. 44-520, having told his supervisor of the problems prior to going to a doctor in March 1993. Further, the Appeals Board finds the claim for compensation provided to respondent on August 3, 1993, would be within two hundred (200) days of a March 1993 injury and thus claimant has satisfied the written claim requirements of K.S.A. 44-520a.

Accordingly, the Appeals Board finds the Order of Administrative Law Judge Floyd V. Palmer dated June 16, 1995, is appropriate and should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Floyd V. Palmer dated June 16, 1995, should be and

is affirmed and claimant is entitled to ongoing vocational rehabilitation benefits stemming from an injury occurring before July 1, 1993.

IT IS SO ORDERED.

Dated this ____ day of September, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stanley E. Oyler, Topeka, Kansas
Ronald J. Laskowski, Topeka, Kansas
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director